

The Section 112, Second Paragraph Rejection

Claims 21, 25-26, 33-34 and 39 stand rejected by the Examiner under 35 U.S.C. § 112, second paragraph, the Examiner alleging that these claims were indefinite. This rejection is respectfully traversed to the extent it applies to these claims as amended by this Response. The amendments presented herein are presented solely to overcome the Examiner's Section 112, second paragraph concerns, improve claim form and are not presented in any way to substantively limit claim scope. Note, however, that "reflective" has been deleted from a number of claims as this term as the surface recited in these claims need not be reflective. Further, as corrected noted by the Examiner, the term "substrate" should have been --surface-- in dependent claims 25 and 26.

Responding now to the Examiner's specific allegations, the term "reflective" has been cancelled in the fourth line of claim 21 to correct the antecedent basis concern raised by the Examiner.

In claims 25 and 26, the term "substrate" should have been --surface--. Now, clearer antecedent basis for this term exists in the parent claim and the intended meaning of these claims has been clarified.

In claim 33, the term "reflective" has been cancelled. This has similarly been the subject of an amendment to claims 32, 34, 40 and 41.

Claim 39 has been amended to change its dependency, thereby correcting the antecedent basis concern noted by the Examiner.

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For all of the above stated reasons, reconsideration and withdrawal of the outstanding Section 112 rejection is respectfully requested. Should there be any formal matters of concern to the Examiner, the Examiner is invited to contact the undersigned to rectify these concerns.

The Art Rejection

The Examiner has rejected claims 21-24 and 36-37 under 35 U.S.C. § 102(e) as being anticipated by the Lee et al. patent. This rejection is respectfully traversed for the following reasons.

The Lee patent is directed to a different invention than the present application, the claims all being directed to an optical phase shifter including structure contained therein. The Lee patent was first filed on July 3, 1997. In contrast, the present application was filed as a utility application on March 27, 1998 and claims priority under Section 119(e) of provisional application 60/041,725 filed March 27, 1997. Thus, the effective filing date of the present application is March 27, 1997. See M.P.E.P. Section 706.02 "DETERMINING THE EFFECTIVE FILING DATE OF THE APPLICATION", Subsection (D).

Section 102(e) of the U.S. patent laws requires the invention described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicants. Since the effective reference date of the Lee patent is July 3, 1997, and since the invention date of the present application must be at least as early as the effective filing date of March 27, 1997, the Lee patent is not

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available as a reference against the present application under Section 102(e), or any other subsection of Section 102. Consequently, the Lee patent is not a proper reference against the claims of the present application. Accordingly, the Examiner is respectfully requested to reconsider and withdraw his rejection as it applies to these claims.

New claims 43 and 44 of the present application have been added to this application. These claims supported by the elected embodiment depend from claims 21 and 22 and recite an additional feature of the preferred embodiment, as recited in claim 1 and distinguishing over Lee.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding rejections and issuance of the present application is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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